

BOARD OF SELECTMEN  
HARMONY HALL  
October 23, 2012

PRESENT – Cathy Richardson, Chairperson, George A. Malliaros, Clerk, Joseph DiRocco, and John J. Zimini. Also present: Dennis E. Piendak, Town Manager, Glen Edwards, Asst. Manager/Town Planner, James A. Hall, Town Counsel and Samantha Carver, Recording Secretary.

TIME – The Chairman called the meeting to order at 7:00 p.m.

Selectmen Bob Cox arrived at the meeting at 7:45 p.m. during the public hearing for Tre Torri LLC & A & G Realty Trust.

The Pledge of Allegiance was recited and a moment of silence was held.

Ms. Richardson asked if anyone had community input.

**Community Input**

Mr. Rich Cowan of 12 Greenlawn Avenue spoke regarding Lenny Siegal an EPA Activist from California who will be in Dracut to talk about the issues at the Mill Property on Pleasant Street.

**Town Manager's Report**

Mr. Piendak stated that the D.E.P. will hold another information meeting on Sunday October 28, 2012. They set the times for the two sessions being 10:30 am and 1:30 pm. The contact with the D.E.P. has emailed parents and coaches to let them know about these sessions and it will be held at the Central Fire Station at 488 Pleasant Street.

Mr. Piendak reported that the Library Director Randy Robertshaw has given his resignation. He is going to work for a private organization.

Mr. Piendak reported that the CPA levy for Dracut is 26.83% this year which is \$189,374.

Mr. Piendak was asked by the Town Clerk to request that the residents be patient on voting day. She has had 1500 new voters sign up and they have had 700 absentee ballots so far. He stated that some of these people only come out to vote every four years and if they haven't sent in their Census form they are put on an inactive list. They will have to be reactivated the day they vote and this can take time. Mr. Piendak reported that the busiest times to vote is after 4:00 p.m. so people will need to be patient. You can contact the Town Clerk's office for absentee ballots. A list of the where to vote and which precinct you're in is on the Town's webpage. Mr. Piendak also noted that there will be a one-way traffic pattern through the library on voting day.

Mr. Zimini mentioned that he had asked about an environmental report at the location of the property where Family Dollar is being built on Pleasant Street. He was provided with that 21E report. He reported that the bottom line is there are no environmental problems at this location.

Mr. DiRocco asked Mr. Piendak if he had the costs associated with Old Home Day that he had asked for. Mr. Piendak provided those costs to the Board. Mr. DiRocco asked if he had the cost for the school personnel and Mr. Piendak stated he will find those out.

### **Cart Path and Barn Road Proposed Street Acceptance**

Mr. Piendak was advised by the Town Engineer that these roads are not ready for final inspection so they are not recommending them for acceptance at this point. Mr. Piendak stated that they could be ready by Town Meeting and that the Town Engineer would be briefed tomorrow at the Planning Board meeting. If they are still not ready by Town Meeting they would have the option to put it off until the June Town Meeting warrant.

There was no one who spoke on this public hearing.

Mr. DiRocco made a motion to close the public hearing. Mr. Zimini seconded the motion. The motion carried 4 in favor.

Mr. DiRocco made a motion to continue the public hearing until the Board of Selectmen's meeting the night of the November town meeting. Mr. Malliaros seconded the motion. The motion moved to a vote with all 4 in favor.

### **Application for All Alcoholic Beverages Liquor License – Four Oaks Country Club**

Ms. Richardson read the hearing notice for Four Oaks for an all alcoholic beverage restaurant license into the record.

Attorney Steve Pangiatkos was present for the presentation to the Board. He stated that this license area is as stated in the request which would cover some new construction that will take place on the restaurant and the whole clubhouse area are included as the licensed area. The renovations will be about \$400,000 there will be another \$100,000 of start up costs. Attorney Pangiatkos named the owners of the country club, Peter & Tina Niarhos, Michael & Cynthia Keunzler discussed what role they each have in the corporation. Currently there is a license in existence for the property in the name of Meadow Creek Country Club Inc. who no longer has ownership or any right to occupy or use the premises. They are also in bankruptcy. We have negotiated with the bankruptcy trustee and Attorney Pangiatkos has given the Board a stipulation agreement with Four Oaks Realty LLC. He has also given the Board a copy of a lease which is contingent upon that transfer to Four Oaks Country Club for twenty-one years. Yesterday a motion was filed to accept the stipulation agreement signed by the Bankruptcy

Trustee and the Principles with the U.S. Bankruptcy Court; the Trustee expects a hearing to be held on or before October 31, 2012 on that motion. They are asking that the Board approve the liquor license for Four Oak Country Club Inc.

Mr. Malliaros stated that if the agreement is dependent upon approval by Bankruptcy Court he wondered if they should wait until the approval has been issued.

Attorney Hall stated that the parties have agreed and there seems to be sufficient evidence that the former owner has given up his rights to the liquor license. Attorney Hall stated that if they did not receive this information, the Selectmen would have to have a hearing to take the license away from the previous owner. He said that you could wait in the abundance of caution however he feels certain that it is likely to be approved and you could speed the process along a little bit.

Mr. Zimini made a motion to close the public hearing. Mr. Malliaros seconded the motion. The motion moved to a vote with all 4 in favor.

Mr. Malliaros made a motion to approve the application for liquor license. Mr. Zimini seconded the motion. The motion moved to a vote with all 4 in favor of the motion.

### **Special Permit Application – 61-66 Silva Lane - Tre Torri, LLC & A&G Realty Trust**

Attorney John Cox represented the owners of the property on Silva Lane. The special permit application was for heavy vehicle equipment sales and repair garage. Attorney Cox stated that this building will be built in three phases and will have eighteen bays and some offices. The first phase will consist of an office area and six bays. The Owner's of the property are the Albanese and Ciano families. Once this is built it is the intention to lease these bays. They believe this will create ten new jobs in the Town of Dracut. The property there is currently assessed at \$547,000 at the end of the day they expect the value to be in the vicinity of approximately \$3 million dollars. Attorney Cox noted an additional tax revenue for the Town.

Attorney Cox went onto explain that a Department Head meeting was conducted by the Town and a list of conditions were made following that meeting. The Owners have no issues with any of the conditions and is in agreement with the conditions. There was also a variance needed to do work in the buffer zone which was approved. Attorney Cox presented a copy to the Board.

Attorney Cox discussed the previous special permit that was issued on this property and the safeguards that have been provided to make sure that permit has been abandoned or disposed of. Attorney Cox also mentioned there was a lot of discussion regarding the detention pond. He also mentioned the owner's association that was supposed to have been formed twelve years ago when this area was developed. He reported that the first owner's association meeting took place and they are getting the association going again. He stated they recently had a meeting with the property owners regarding the detention pond and Mr. Mike Buxton, Mr. Mark Hamel and Mr.

Glen Edwards from the Town also attended. Attorney Cox also reported that they have filed a notice of intent with the Conservation Commission. Attorney Cox also provided the Board with new plans and noted the following changes on the plan, the changes are footnotes related to the gravel area, floor drains, the dumpster location, catch basins, drain lines and a fire hydrant.

Mr. Malliaros stated that he believes he may have a potential conflict on this matter and left the meeting at 7:39 p.m.

Mr. Piendak pointed out to the Board that as part of the bylaw this special permit would require four votes.

The Chairperson requested a recess to clarify the conflict with the Attorneys at 7:40 p.m.

Ms. Richardson came back on the record at 7:45 p.m. At this point in the meeting Board Member Bob Cox arrived. Another recess was called at 7:46 p.m. for Attorney Hall to discuss this issue with Board Member Cox. When the meeting continued at 7:47 Attorney Hall stated that the bylaw requires four votes out of five and with Mr. Malliaros believing he had a conflict, and Mr. Cox not present they only had three members who could vote. The Board in affect became ineffective. The Chairman can declare a rule of necessity by polling all the members of the Board to see if they can vote. If they have four that can vote, the fifth leaves the room. If they only have three members who can vote, the Chairperson declares that and then all five members can vote. Attorney Hall stated at this juncture the Board should be asked if they can vote or if they are restrained by a conflict not to vote. In a roll call vote, the Chairperson polled the Board: Mr. Cox – No; Mr. DiRocco – Yes; Ms. Richardson, Yes, Mr. Malliaros – after discussion did not have a conflict and can vote, Yes, Mr. Zimini – Yes.

Attorney Hall suggested that Mr. Cox having a conflict remove himself from the room and the other four members can vote.

Selectman Cox removed himself from the room at 7:50 p.m.

The Chairperson asked if anyone would like to speak on this special permit.

Mr. Josh Taylor of Lincoln Lane – Finance Secretary of the Centralville Sportsmen's Club; was in favor.

Mr. Kevin Snyder – 85 Mailloux Terrace, President of the Centralville Sportmen's Club – in favor.

Mr. Zimini made a motion to close the public hearing. Mr. DiRocco seconded the motion. The motion carried with 4 members voting in favor.

Mr. Zimini made a motion to grant the special permit for 61-66 Silva Lane which includes the stipulations discussed and have some discussion on the hours of operation (Stipulations as noted in the Memorandum by Glen Edwards dated October 18, 2012). Mr. DiRocco seconded the

motion for discussion. Mr. Zimini asked Mr. Edwards about the discussion at the Department Head meeting regarding the 7am to 11pm hours. Mr. Edwards recapped the review the departments had at the meeting. Mr. Edwards noted that because its heavy equipment repair the issue was brought up and discussed. He did not hear anything from the public on the issue. There was a question on the abutters list and whether there was much opposition to the special permit. A question was posed as to whether this would set a precedent by having hours of operation to 11:00 p.m. for repairs. Mr. Zimini pointed out that as part of the conditions noted they can revisit and review the permit in six months if there are any issues with this property. Mr. Zimini asked if there is a problem in the future that this permit could come under review and asked Mr. Edwards to add that to the stipulations. Mr. Piendak made the following suggestion for the stipulation to be added: during the life of the permit, the applicant voluntarily agrees to return to the Board of Selectmen and meet if potential violation of any of the stipulations in the permit. Mr. Cox was asked about repairs outside. He stated they are basically sales and if there were a repair to make it would be inside the bay, most likely during the day. He stated the later hours are more for delivery of equipment. Mr. Malliaros was concerned with setting a precedent having such late hours to do repairs. Attorney Hall stated that this would not set a precedent although it is always a concern. He stated that as Counsel pointed out it is somewhat unique to this business in an industrial use.

The motion was moved to a vote with 4 members voting in favor of the special permit with the stipulations and conditions discussed.

### **Back to the Boathouse – A. J. Leaver Corp. – Change of License**

Chairwoman Richardson advised that in June 2011 this petitioner came before Town Meeting for a deck to be built at the rear of this property which was voted down at Town Meeting. Since that time this Petitioner has been before the Planning Board with a new deck plan which was approved with stipulations. Ms. Richardson stated she has since done a site visit to this property to have a better idea how this deck would affect the parking at this location.

Mr. DiRocco made a motion to approve the change of license. Mr. Malliaros seconded for discussion. The discussion was that the zoning would have needed to be changed if the deck was to be built at the rear of the building and that was the issue at Town Meeting. No zoning change is required to make the deck on the side of the building it is appropriately zoned for this deck. Ms. Richardson stated that her issues have been addressed and she has been assured that parking will not encroach onto other areas. Mr. Zimini had a different recollection from the June Town Meeting and he will continue to vote no on this issue due to the concerns of the abutters regarding this deck. Ms. Richardson noted that she had concerns about the parking but had done a site visit to get a better picture. Ms. Richardson reiterated the conditions set by the Planning

Board that the deck would close at 8:00 p.m. Ms. Richardson called for a vote. By roll call vote: Mr. DiRocco, yes; Mr. Malliaros, yes; Mr. Zimini, no; Ms. Richardson, yes and Mr. Cox abstained. The motion passed 3 in favor; 1 opposed; 1 abstained.

### **Donation for the Fire Department**

Ms. Richardson read the memorandum from Chief Brouillette dated October 11, 2012 into the record regarding a donation to the Fire Department from Louis Darvirris from Downtown Page.

Mr. Malliaros made a motion to accept the donation. Mr. DiRocco seconded the motion. The motion carried unanimously.

### **Request to sell poppies – American Legion Ladies Auxiliary**

Ms. Richardson read the letter from Dracut American Legion Ladies Auxiliary requesting permission to sell poppies during November 1-11, 2012.

Mr. Zimini made a motion to grant permission to sell poppies. Mr. Cox seconded the motion. The motion carried unanimously.

### **Minutes**

The Board reviewed the minutes of October 3, 2012 and October 9, 2012. Mr. DiRocco made a motion to approve as presented both October 3<sup>rd</sup> and October 9<sup>th</sup> minutes. Mr. Malliaros seconded the motion. The motion carried unanimously.

### **Review & Recommend Warrant Articles**

Article 1 – Waive the reading of the articles

Mr. Cox made a motion to accept; seconded by Mr. Zimini. The motion carried.

Article 2 – Community Preservation appropriate and expend for the acquisition of 144 Greenmont Avenue and 1530 Bridge Street

Mr. Zimini stated he had a conflict on this article and would be stepping out of the room for this portion of the meeting.

Ms. Helen Dunlap, Chairperson for the Community Preservation began the presentation to the Board regarding the purchase of this property for affordable housing. Ms. Dunlap introduced Mr. Ken Lania of the Community Preservation Committee who made the presentation to the Board regarding the concept plan for affordable housing. Ms. Dunlap also noted that Mary Karabatsos and other members of the Dracut Housing Authority were also present.

Ms. Richardson asked if anyone in the audience would like to comment on the project.

Abutters:

Mr. Greg Dooley of 1520 Bridge Street – not in favor

Questions that had come up after the presentation by the Board were as follows:

- Wetland issues – whether Conservation Commission has weighed in on this concept;
- What funding sources are there for affordable housing – whether they will have the funding and what happens with the land if they can't get funding;
- What the build out cost for the project is?

Mr. Piendak mentioned that as a condition they could add a re-verter that if the land does not get developed within a period of time it will revert back to the Town and the town can market it for affordable housing. A question was asked how much money is in the preservation fund. Mr. Piendak responded \$8.3 million with \$1.1 million for affordable housing. After the discussion on the parcel and the questions on the wetlands it was suggested that the Community Preservation Committee try to obtain more information on the wetland issue for the Board before they render their vote on the article.

Audience members who spoke on the article:

Russ Taylor Commissioner for Housing Authority – in favor

Deborah Dewitt Ahearn – Commissioner for Housing Authority – in favor

Dave Cameron 1572 Bridge Street – traffic on Bridge Street, no sidewalks, wetlands

Mr. DiRocco made a motion to table this article until the meeting before the November Town Meeting. Mr. Cox seconded the motion. The motion carried unanimously.

### **Article 3 & 4**

Ms. Richardson stated that these two articles are a result of the Zoning Bylaw Review Committee's work on the language which she had attended some of the meetings along with Mr. Cox from the Board.

Mr. Bob Flynn the Chairman of the Zoning By-law Review Committee explained the changes made to Zoning By-Law Section 2.16.21 and 2.16.22 regarding the language. He discussed the use of the word more detrimental and less detrimental. He stated their goal was to try and clear up the use of the word as it relates to the bylaw. Mr. Malliaros asked Mr. Flynn to elaborate on his background for those who didn't know who he was.

Mr. Malliaros made a motion to accept Article #3 and Article #4 as presented. Mr. DiRocco seconded the motion. The motion carried unanimously.

## **Article 5**

Ms. Richardson read the motion for Article 5 and had Mr. Ludwig come forward on the issue. Mr. Ludwig presented his argument for the article to the Board. Mr. Piendak questioned whether if this access was blocked off how others would access the parking area. Mr. Piendak explained the Town Meeting abandoning a street would just abandon the Town's rights to construct a roadway there it does constitute a transfer of ownership. Attorney Hall it does not abandon the Town's right to have the sewer line or drainage there it would reserve that right at the very least. There was also a letter from Mike Buxton, the Director of Public Works regarding this article and he was not in favor. The Planning Board is waiting for an opinion from Town Counsel so they have not given their recommendation yet.

Mr. Zimini made a motion to table this item until the meeting before the November Town Meeting. Mr. Malliaros seconded the motion. The motion carried unanimously.

**Article 6 & 7** were previously discussed and carried over to the meeting before Town Meeting.

## **Article 8**

Ms. Richardson read Article 8 into the record with regards to the Greater Lowell Regional School.

Mr. Piendak stated that in the interest of expediency he is going to recommend to the Town Meeting approval of this article subjective to whether an amendment is added that it be subject to debt exemption vote from the provisions of Proposition 2½ and to go to a ballot vote for the debt exemption. The reason for this is very simple it's economic and went on to explain his reasoning. Mr. Piendak recommended that the Board adopt the recommendation with the amendment provision.

Mr. Zimini asked if there is an amendment to this article. Mr. Piendak explained their Bond Counsel wrote the article and has added the amendment in a sentence at the end of the motion in the article or he could amend it on the floor if they'd like. Mr. Zimini agreed that the Town's budget couldn't sustain this without a debt exclusion. Mr. Zimini stated he agrees this work at the school needs to be done and one way or the other the Town will have to pay for it. He stated the Technical School Representatives need to get out and sell it to the people to try and get this debt exclusion passed similar to what Dracut was able to do on their High School project.

Mr. Piendak went onto explain if this amendment for debt exclusion passes then the ballot vote would take place on or about December 11, 2012.

Mr. DiRocco and Mr. Malliaros were in agreement with this article if there is a debt exclusion vote.



Mr. Victor Olson member of Greater Lowell Tech School Committee stated that if they need to support an amendment to do this as a debt exclusion they are fully supportive of that understanding the Town's finances. Tyngsboro, Dunstable and Lowell have voted to support this project within their operating budgets.

Mr. DiRocco made a motion to support the article as amended with the debt exclusion language. Mr. Malliaros seconded the motion. The motion carried unanimously.

### **Sub Committee Reports**

Mr. Malliaros reported that the Education Sub-Committee will meet tomorrow night at 7:00 p.m.

### **Town Charter**

Mr. Edwards reported that the Consultant has informed him that he is finished with his interviews and will be preparing a draft for the Board's review within the next few weeks.

### **Other Items for Discussion**

Selectmen Zimini discussed the future development of the Dadak farm parcel and would like to get this area developed. He would like to see some type of plan for this area and not have it sit there. Mr. Zimini stated with the changes in the CPA law they may be able to use funds from there. Mr. Piendak made a suggestion that it be referred to the Recreation Department for discussion. Mr. Zimini stated there is a Selectmen sub-committee for Recreation also. Recreation can come back with a plan and inform the Board what they need. Mr. Piendak stated that he will have the Recreation Committee notify the Selectmen Sub-Committee when they are meeting on this issue.

Mr. Zimini discussed the area of 971 Mammoth Road and speeding. He stated that there have been some accidents in this area and wanted to discuss permanent electronic speed control signs and also having increased speed patrol by the Dracut Police.

Mr. Piendak stated that he will speak with the Chief of Police to increase patrols in this area and will have the temporary electronic speed sign put in this area. He also mentioned that some years ago Dracut Housing had special legislation passed to have that area marked as a senior zone that has flashing lights. He mentioned maybe they could add radar detector unit controls to that pole which they are already maintaining. Mr. Zimini did not want to see this be pushed off to the Housing Authority he feels it is the responsibility of the Town and would like to see something done in the area. He would like the Manager to come back with some type of plan on the cost of the electronic signs for this area and whether it can be done or not.

### **Collective Bargaining NEPBA – Dispatchers**

Mr. Piendak stated in the interest of expediency he went over what was negotiated in the Memorandum of Agreement as a result of negotiations with the Dispatchers Union. He highlighted some of the points in the agreement and made the recommendation to the Board to approve the three year agreement.

Mr. Cox made a motion to approve the Memorandum of Agreement with the Dispatchers Union. Mr. DiRocco seconded the motion. The motion moved to vote with a 5-0 vote in favor.

### **Community Calendar**

Chairperson Richardson read the Community Calendar items into the record.

### **Adjourn**

Mr. Zimini made a motion to adjourn the meeting at 9:40 p.m. Mr. DiRocco seconded the motion. The motion carried unanimously.

### **BOARD OF SELECTMEN**

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Cathy Richardson, Chairperson

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Joseph DiRocco, Jr., Vice-Chairman

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George A. Malliaros, Clerk

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John J. Zimini

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Robert O. Cox

